

REMARKS**1. Claims Amendments.**

Claim 1 has been amended to more clearly define the structure of the invention in that the showerhead has a central nozzles that serves as both the spray nozzle and the suction nozzle and that when the showerhead is in the suction mode, no water passes through the spray ring or the spray nozzle. Support for this is found in the Specification as originally filed on page 6, lines 2 - 6, and page 11, line 1 through page 12, line 16.

Claim 2 has amended to further clarify that when the showerhead is in the suction mode, water communicates only with the third set of water outlets, which exhaust the water through the suction outlet baffle. Support for this is found in the Specification as originally filed on page 6, lines 2 - 6, and page 11, line 1 through page 12, line 16.

Claims 3 - 12 have not been amended.

Claim 13 has been amended to incorporate the subject matter of Claim 14 and to further clarify that when the showerhead is in the suction mode, water communicates only with the second set of water outlets, which exhaust the water through the suction outlet baffle. Support for this is found in the Specification as originally filed on page 6, lines 2 - 6, and page 11, line 1 through page 12, line 16.

Claim 14 has been canceled as its subject matter has been incorporated into Claim 13.

Claim 15 has been amended to depend from Claim 13 rather than canceled Claim 14.

Claim 16 has amended to further clarify that when the showerhead is in the suction mode, water communicates only with the second set of water outlets, which exhaust the water through the suction outlet baffle. Support for this is found in the Specification as originally filed on page 6, lines 2 - 6, and page 11, line 1 through page 12, line 16.

Claim 17 has been amended to incorporate the subject matter of Claim 18 and to further clarify that when the showerhead is in the suction mode, water communicates only with the second set of water outlets, which exhaust the water through the suction outlet baffle. Support for this is found in the Specification as originally filed on page 6, lines 2 - 6, and page 11, line 1 through page 12, line 16.

Claim 18 has been canceled as its subject matter has been incorporated into Claim 17.

Claim 19 has been amended to depend from Claim 17 rather than canceled Claim 18.

Claim 20 has amended to further clarify that when the showerhead is in the suction mode, water communicates only with the second set of water outlets, which exhaust the water through the suction outlet baffle. Support for this is found in the Specification as originally filed on page 6, lines 2 - 6, and page 11, line 1 through page 12, line 16.

New Claim 21 is a combination of subject matter taken from original Claims 1 and 14/18, to further clarify that when the showerhead is in the suction mode, water communicates only with the third set of water outlets, which exhaust the water through the suction outlet baffle, and to include the interchangeable central nozzle feature. Support for this is found in the Specification as originally filed on page 6, lines 2 - 6 and page 11, line 1 through page 12.

No new matter has been included in any of the amendments.

2. The Claims As Amended Are Not Anticipated And Are Not Obvious In View Of The Cited Art.

The claims as amended are not anticipated by GB Patent No. 2306351 (Inahara '351) to Inahara and are not obvious over Inahara '351 in view of US Patent No. 6036117 to Heren (Heren '117) or US Patent No. 5845851 to Shfaram (Shfaram '851).

A. Inahara '351 does not anticipate the claims of the present application.

Anticipation under 35 USC 102(b) requires "the disclosure in a prior art reference each and every element of the claimed invention." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ2d 1081 (Fed. Cir. 1986); *see also verdegall Bros. V. Union Oil Co. of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) ("a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference"). The absence of one element from the cited prior reference negates anticipation. *See Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 224 USPQ2d 409 (Fed Cir. 1984). The independent claims now each provide that when the flow valve is rotated

to the suction mode positions, the water passes out of the showerhead **only** through a suction outlet baffle and not through the spray ring or the spray nozzle. Inahara '351 specifically discloses that when in the suction mode, "some water passes via passage 12 to space 3a and so gives a small flow down the outside of the shower plate to assist in suction cleaning of the skin etc." See Inahara '351 Abstract. As originally disclosed and now claimed in the present patent application, when in the suction mode, no water passes through the shower plate (spray ring) or the spray nozzle - all the water is exhausted through the suction outlet baffle. Additionally, Inahara '351 does not disclose or claim the interchangeable nozzle of new Claim 21. Thus, Inahara '351 does not "reference each and every element of the claimed invention" and does not anticipate the claimed invention, and Applicant requests that the examiner withdraw this ground for rejection.

B. A combination of Inahara '351 and Heren '117 or Shfaram '851 does not obviate the claims of the present application.

For a claim to be determined obvious (or nonobvious) under 35 USC 103, the claimed material must have been obvious to person of ordinary skill in the art from the prior art. An obviousness determination requires examining (1) the **scope** of the prior art, (2) the level of skill in the art, and (3) the **differences** between the prior art and Applicant's invention. *Litton Systems, Inc. v. Honeywell, Inc.*, 117 SCt 1270 (1970). A mere suggestion to further experiment with disclosed principles would not render obvious an invention based on those principles. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 19 USPQ2d 1432 (Fed. Cir. 1991). In fact, an applicant may use a reference as his basis for further experimentation and to create his invention. *Id.*

The fact that each element in a claimed invention is old or unpatentable does not determine the nonobviousness of the claimed invention as a whole. See *Custom Accessories, Inc., v. Jeffrey-Allan Industries*, 1 USPQ2d 1196 1986 (Fed. Cir. 1986). The prior art must not be given an overly broad reading, but should be read in the context of the patent specifications and **as intended by reference authors**. *Durling v. Spectrum Furniture Co.*, 40 USPQ2d 1788 (Fed Cir 1996) (Federal Circuit held that district court erred by giving a "too broad an interpretation" of claims in a sofa patent to invalidate another on the nonobviousness standard).

The Federal Circuit has defined and determined the bounds of the prior art to be identical for both nonobviousness and anticipation purposes. See *In re Lowry*, 32

USPQ2d 1031 (Fed. Cir. 1994). Prior art for these purposes is pertinent art recognized by persons of ordinary skill to be in the field of the invention. *See In re Spada* 15 USPQ2d 1655, 1657 (Fed.Cir.1990), *In re Home*, 203 USPQ 969, 971 (CCPA 1979). Prior art is pertinent if persons of ordinary skill in the art would have consulted art in that field to develop the invention given the nature of the problem. *See In re Paulsen*, 31 USPQ2d 1671 (Fed. Cir. 1994). Specifically, the pertinence of any reference is dependent upon whether it would suggest to persons skilled in the art to do the thing that the applicant has done, and the same is true in considering more than one reference or a reference alleged not to be in the particular art. *See In re Phipps*, 69 USPQ 88 (CCPA 1946). Nonanalogous prior art cannot properly be considered prior art under 35 USC 103. *In re Pagliaro*, 210 USPQ 888, 892 (CCPA 1981).

The Federal Circuit has made it clear that the nonobviousness standard is applied wrongly if a court or an examiner: (1) improperly focuses on "a combination of old elements" rather than the invention as a whole; (2) ignores objective evidence of nonobviousness; (3) pays lip service to the presumption of validity; and (4) fails to make sufficient *Graham* findings. *Custom Accessories, Inc.*, 1 USPQ2d 1196 (Fed. Cir. 1986). Applying the nonobviousness test counter to these principles counters the principle that a patent application is presumed nonobvious. *Id.*

Also, to sustain a rejection under 35 USC 103, the examiner must establish a *prima facie* case of obviousness. MPEP §2142. To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

When Inahara '351, Heren '117 and Shfaram '851 are examined, they are not in the same fields. Yes, all three patents relate to water control, but only Inahara '351 relates to showerheads (indoor plumbing), while both Heren '117 and Shfaram '851 relate to irrigation type hoses (outdoor plumbing). It is essential to emphasize that not only are indoor plumbing fixtures and outdoor irrigation plumbing devices disparate, but they are also used by different purposes in entirely different arts. Because the fields are different, the connection between indoor plumbing fixtures and outdoor irrigation devices is far too attenuated to be coupled by persons of ordinary skill in the art of designing indoor plumbing fixtures, and vice versa. One of ordinary skill in the art would not use an outdoor irrigation device as a showerhead, and would not look to the outdoor irrigation art for prior art, and vice versa.

Without using Applicant's invention as a blueprint or working back from

Applicant's invention, it is not obvious to combine the fields of indoor plumbing fixtures with outdoor irrigation devices. As discussed above, the patent system does not render obvious old elements in alternative arts in a new manner. Even if Applicant or a person of ordinary skill in the outdoor irrigation devices art also were familiar with Inahara '351, it would not have been of any help *without motivation* to combine Inahara '351 with Heren '117 or Shfaram '851 to invent a novel showerhead. This is strongly evidenced by the fact that Inahara '351 did not cite either Heren '117 or Shfaram '851, and vice versa, in the reference section. Further, because neither Heren '117 nor Shfaram '851 disclose or claim a showerhead, a spray shower, a spray nozzle, a suction nozzle, suction outlet baffle, or any other structure related to a showerhead or the present invention, neither has any features that can be combined with Inahara '117.

Because neither Heren '117 nor Shfaram '851 are within the bounds of the proper prior art for the present invention, neither should not be put forth to render Applicant's invention obvious. For these reasons and because Applicant's invention is presumed nonobvious, Applicant respectfully requests that the examiner withdraw this ground for rejection.

CONCLUSION

Applicant believes it has fully addressed the examiner's concerns and that the patent application is in condition for allowance, and Applicant respectfully requests such action.

If the examiner has any final concerns that can be addressed over the telephone, the examiner is invited to contact the below-signed attorney of record.

Respectfully submitted,
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